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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~432.~~ 161

CHICOT COUNTY, PLAINTIFF IN ERROR,

vs.

CHARLES E. LEWIS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS

FILED JUNE 19, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 432.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the eastern district of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between Charles E. Lewis, plaintiff, and Chicot County, defendant, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States ought be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 29 day of May, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and second.

[SEAL.] RALPH L. GOODRICH,
Clerk of the Circuit Court of the United States of America,
for the Eastern District of Arkansas.

Allowed by—

HENRY C. CALDWELL,
Dist. Judge.

The execution of the foregoing writ of error appears by the schedule hereto annexed.

RALPH L. GOODRICH,
Clerk.

Filed May 29, 1878.

RALPH L. GOODRICH,
Clerk.

Be it remembered that on the 18th day of September, 1877, and on the 19th day of February, 1878, came into the clerk's office of the circuit court of the United States for the eastern district of Arkansas, Charles E. Lewis, by Eben W. Kimball, esq., his attorney, and filed therein his complaints at law against Chicot County, which complaint, filed September 18, 1877, is as follows:

In the circuit court of the United States for the eastern district of Arkansas.

CHARLES E. LEWIS *vs.* CHICOT COUNTY. } Complaint at law.

Charles E. Lewis complains of Chicot County, and says, that he is a citizen of England, in the Kingdom of Great Britian and Ireland, and

the defendant is a quasi municipal corporation, and a citizen of Arkansas, and of the eastern district thereof. That by virtue and in
3 pursuance of an act of the general assembly of Arkansas, entitled "An act *an act to entitled* to authorize counties to subscribe stock in railroads," approved July 23rd, 1868, said county for stock so subscribed, issued her certain writings obligatory on the 11th day of May, 1872, whereby for stock of the after-named road, she promised to pay to the Little Rock, Pine Bluff and New Orleans Railroad Company $50, on the 1st day of January, 1892, and interest semi-annually on the first days of January and July of each year, in New York, at the rate of 6 per cent. per annum.

That among said writings obligatory was a certain bond, numbered 121, to distinguish it from other bonds of like character and date, which bond was duly registered in the office of the auditor of State of Arkansas. That attached to said bond was a certain coupon numbered 7, a copy of which is hereto annexed and marked A, whereby said county promised to pay to the bearer fifteen dollars, being ½ year's on
4 said bond, on the 1st day of July, 1875; that before said coupon became due it was sold and delivered to the plaintiff, who then became and now is the bona fide owner and bearer thereof for value. That the same has been duly presented for payment and payment refused, and the same has not been paid, and the said county now owes the plaintiff the amount of said coupon and interest at 7 per cent. per annum.

A copy of one of said bonds and of the auditor's certificate thereon is hereto attached and made part hereof, marked B.

(And there are twenty-seven more counts of like import.)

And the plaintiff further says, that by virtue and in pursuance of the provision of said act the said county on the 11th day of May, 1872, made and issued for subscription to stock in the Mississippi,
5 Ouachita and Red River Railroad Company, her certain other bonds, payable January 1, 1887, whereby in each she promised to pay said company or bearer the sum of five hundred dollars, at the time aforesaid, with interest at the rate of 6 per cent. per annum, payable semi-annually, on the first days of July and January. That among said bonds was one numbered 108, to which is attached one interest coupon, a copy of which is annexed marked A, whereby said county promised to pay the bearer $15, in New York, July 1, 1875, being ½ year's interest on said bond; that said bond was duly registered in the office of the auditor of the State of Arkansas; that before said coupon became due it was sold and delivered to the plaintiff, who then became and now is the bona fide owner and bearer thereof for value; that the same is marked 7 to distinguish it from others; that it has been duly presented for payment and payment refused; that the same has
6 not been paid, and the defendant now owes the plaintiff thereon $15, and interest from its maturity at 7 per cent.

(And there are thirty-five more counts of like import.)

And for a further cause of action the plaintiff further says, that on the 11th day of May, 1872, said county, in said district, made and issued its forty-eight (48) certain bonds, dated on said day, whereby it promised to pay said Mississippi, Ouachita and Red River Railroad Company or the bearer thereof the sum by each bond of $500, on the 1st day of January, 1887, with interest at the rate of 6 per cent. per annum, payable semi annually on the first days of July and January of each year, upon the delivery of the interest coupons to each of said bonds attached; that said bonds, to distinguish them from other bonds of like character

and date were numbered from 133 to 180 inclusive, in all 48 bonds.

7 That afterwards all of said bonds were duly registered in the office of the auditor of State of Arkansas; that attached to each of said bonds, among others, were four coupons numbered 7, 8, 9, and 10 respectively, and each in the sum of $15, and falling due July 1, 1875, January 1, 1876, July 1, 1876, and January 1, 1877; in all 192 coupons, by each of which said county promised to pay to the bearer the sum of $15, at its maturity, being one-half year's interest on each of said bonds. That a copy of said bonds and coupons, except as to number, and of the certificate of registration, is hereto annexed, and marked Exhibit A. That before any of said 192 coupons became due they were all sold and delivered to the plaintiff, for value; *also* then became and now is the lawful bearer and owner thereof; that when they became due they were duly presented for payment and payment demanded and refused;

8 that the defendant has not paid any of said coupons nor the interest on said bonds for which they were drawn, but are now indebted to the plaintiff therefor in the sum of $15 on each coupon, and the sum of $2,880 on all of them, with interest at the rate of 7 per cent. per annum from the maturity of each.

Therefore he demands judgment against said county in the sum four thousand five hundred dollars, and interest, costs, and all other relief.

EBEN W. KIMBALL,
For Pl'ff.

Which complaint filed February 19th, 1878, is as follows:

Charles E. Lewis complains of Chicot County, and says:

That he is a citizen of London, England, in the Kingdom of Great Britain and Ireland, and the defendant is a quasi municipal corporation, a citizen of the State of Arkansas, and a resident of said district.

9 That upon the 11th day of May, 1872, said county, by virtue of an act of the general assembly of Arkansas, approved July 23rd, 1868, and in pursuance thereof, executed and delivered to the Little Rock, Pine Bluff, and New Orleans Railroad Company her certain writings obligatory, whereby she promised to pay said company or bearer, January 1st, 1892, $500, by each bond, and interest thereon at the rate of six per cent. per annum, payable on the 1st days of January and July thereafter, and evidenced by certain coupons to each of said bonds attached. That among said bonds were some, *to* which to distinguish them from others of like date, time and character, were, numbered 121, 124, 125, 137, 138, 139, 140; that attached to each of said bonds were, amoung other, two coupons numbered 11 & 12, respectively, and falling due July 1, '77, and Jan'y 1, '78, and each for $15, and payable in New York, there being 14 such coupons in all, amounting to $210.

10 That upon maturity, and for a valuable consideration, said company sold and delivered said last named bonds and coupons to the plaintiff who then became and now is the bona fide bearer and owner thereof; that when said coupons became due, payment was duly demanded and was refused.

A copy of said bonds and coupons, and the auditor of State's certificate thereon, is hereto attached and marked B.

The defendant owes the plaintiff $2.10 and seven per cent. interest on said coupons.

2*n* COUNT.—And the plaintiff further says, that by virtue said act, and pursuance thereof, on the 11th day of May, 1872, said county executed and delivered the Mississippi, Ouachita and Red River Railroad Company her writings obligatory, whereby she promised to pay said

company or bearer $500, on the 1st day of January, 1887, with interest at 6 per cent. per annum, evidenced by certain coupons to each of said bonds attached, and payable in New York on the 1st days of
11 January and July of each year. That among the said bonds were 57, which to distinguish them from others of like date, character, and amounts were numbered 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, and 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, and 180. That attached to each of said bonds were two coupons, among others, which were numbered 11 & 12 respectively, and falling due July 1st, 1877, and Jan'y 1, 1878, being 114 coupons in all, and each for $15, in all amounting to the sum of $1,710; that said company for value received, and before maturity sold and delivered all of said 57 bonds and all of said 114 coupons to the plaintiff, who then became and now is the bona fide bearer and owner thereof; that said coupons are now all due and unpaid; that payment of the same
12 has been duly demanded and refused, and the defendant owes him $1,710 and interest at 7 per cent. per annum from maturity, thereon. Copies are attached marked A.

Wherefore he asks judgment against the defendant for twenty-five hundred dollars, interest, costs, and all other relief.

EBEN W. KIMBALL,
Att'y for Pl'tff.

EXHIBIT A.

Coupon.

Receivable in payment of all county taxes and dues.

STATE OF ARKANSAS:

The treasurer of the county of Chicot will pay fifteen dollars to bearer at the Union Trust Company, in the city of New York, on the first day of 187 , being interest on bond No. .

U. N. GRAVES,
County Clerk.

EXHIBIT B.

UNITED STATES OF AMERICA.

STATE OF ARKANSAS.

Bond No. 108. $500.

13 (Vignette a railway train.)

It is hereby certified that the county of Chicot is indebted unto and will pay the Mississippi, Ouachita, and Red River Railroad Company, or bearer, on the first day of January, 1887, five hundred dollars, lawful money of the United States of America, with interest at the rate of six per cent. per annum, payable semi-annually, on the first day of January and July of each year, at the Union Trust Company, in the city of New York, on the presentation and surrender of the proper coupons hereto annexed.

This bond is one of a series numbered from one to two hundred, inclusively, of like date, tenor, and amount, issued under an act of the

general assembly of the State of Arkansas, entitled "An act to authorize counties to subscribe stock in railroads," approved July 23, 1868, and in obedience to a vote of the people of said county at an election
14 held in accordance with the provisions of said act authorizing a subscription of one hundred thousand dollars to the capital stock of said railroad company.

In witness whereof the said county has caused to be affixed hereto its seal, and has caused the same to be attested by the signature of its county and probate judge, countersigned by the signature of its county clerk, who also signs the coupons hereto annexed, at their office, in said county, this 11th day of May, 1872.

JAS. W. MASON,
County and Probate Judge.

[COUNTY SEAL.] U. N. GRAVES,
County Clerk.

Copy of endorsements.

AUDITOR'S OFFICE, STATE OF ARKANSAS.

I hereby certify that this bond is registered in my office according to law; that it is regularly and lawfully issued, and that the
15 signatures thereto are genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, at the city of Little Rock, this 6th day of December, A. D. 1873.

[L. S.] S. WHEELER,
Auditor of State.

(The coupons are all the same except as to numbers and dates when payable.)

16 *Record entry October term*, 1877.

OCTOBER 24, 1877.

Comes the defendant, by N. M. Rose, its attorney, and files herein its answer.

Which answer is as follows:

The defendant in this action for answer to the complaint of the plaintiff therein says:

That on the 17th day of January, A. D. 1872, the county court of the said defendant county made an order to the effect that an election should be held by the qualified electors of the said county, on the 17th day of February, A. D. 1872, to determine whether the said county should subscribe one hundred thousand dollars to the capital stock of the Mississippi, Ouachita, and Red River Railroad Company, and whether bonds should be issued in payment thereof, and that
17 on the same day the said county court made a like order for an election to be held by the qualified voters of the said county on the 17th day of February, A. D. 1872, to determine whether the said county should subscribe one hundred thousand dollars to the capital stock of the Little Rock, Pine Bluff and New Orleans Railroad Company, and issue like bonds in payment thereof, and at said election held on the said 17th day of February, A. D. 1872, the question was submitted to the electors of the said county as to whether the said stock should be subscribed to the said railroad companies, and whether the said bonds should be issued in payment thereof. The submission of the

said questions being made under orders made by the county court of the said county of the same day, and being voted on by the electors of the said county at the same polls, and not at separate polls, on
18 the same day, by single ballots embracing the question of the subscription to both said railroad companies, and which said ballots were deposited in one and the same ballot-box, and that it was under the said proceedings that the said county court subscribed one hundred thousand dollars to the capital stock of each of said railroad companies, and issued the bonds of the said county in payment thereof. The said bonds being in the aggregate for the sum of two hundred thousand dollars, of which the bonds mentioned in the said complaint are part and parcel, and that the said bonds and coupons in said complaint mentioned were issued on no other consideration whatever.

U. M. ROSE,
JAS. F. ROBINSON,
YONLEY & WHIPPLE,
RICE & BISHOP,
Att'ys for Def't.

19 *Record entry, April term*, 1878.

APRIL 8, 1878.

Comes the defendant, by N. M. Rose, Yonley & Whipple and Rice and Bishop, its attorney, and file herein its motion to consolidate this cause with cause No. 240 on the present docket.

Which motion to consolidate is as follows:

Motion to consolidate.

And now comes the said defendant in each of the above entitled actions and moves the court that the said actions may be consoli-
20 dated into one action; and as grounds of the said motion, states that each of the said actions is now pending in this court. That each of them is brought to recover the amount of certain coupons alleged to be over-due and unpaid upon certain bonds, alleged to have been issued by the said defendant to the Mississippi, Ouachita and Red River Railroad Company, and the Little Rock, Pine Bluff and New Orleans Railroad Company, and of which the said plaintiff alleges that he is now the owner and holder, and that these causes of action are such as may be joined in the same action; that each of the said actions is at issue; that the answer of this defendant is the same in each of them, and that in each of them the same questions will arise.

U. M. ROSE,
JAS. F. ROBINSON,
YONLEY & WHIPPLE,
RICE & BISHOP,
Def't's Att'ys.

21 And on April 22, 1878, as follows:

Comes the defendant, by Yonley and Whipple, U. M. Rose, and Rice and Bishop, esq's, its attorneys, and on their motion it is ordered that this cause be consolidated with cause numbered 240 on the present doc'et, of the same title, and that the said two causes progress as one suit.

And on April 24, 1878, as follows:

Comes the plaintiff, by E. W. Kimball, esq., his attorney, and comes the defendant, by U. M. Rose, Yonley & Whipple, and Rice & Bishop, esq's. its attorneys, and now the court being well and sufficiently advised of the matters arising on the demurrer to the answer heretofore heard argued and submitted, considers that the same be sustained, and the defendant electing to stand on its said answer, and declining
22 to answer further whereby said plaintiff's claim against it remains wholly undefended, and the plaintiff having exhibited and filed herein the 398 coupons on which this action is founded, and the court having inspected the same and the papers in the case, and being now well advised in the premises, it is, therefore, considered, ordered, and adjudged that said plaintiff do have and recover of and from said defendant the sum of six thousand six hundred and thirty-eight dollars and seventy-eight (6,638.78) for his damages, with interest on said damages at the rate of seven per centum per annum from this date, together with all his costs in and about this suit expended.

Which demurrer is as follows:

And now comes the plaintiff and demurs to the answer of the defendant herein because the same does not state facts sufficient to con-
23 stitute a defense thereto.

EBEN W. KIMBALL,
For Pl'ff.

And on May 29, 1878, as follows:

Came this day the plaintiff, by E. W. Kimball, his attorney, and also came said defendant, by U. M. Rose, Yonley & Whipple, and Rice and Bishop, its attorneys, and the writ of error sued out from the Supreme Court herein is allowed by the judge of the district court, and the bond of the plaintiff in error is filed herein and approved, and service of the citation is acknowledged by the attorney of said Lewis.

Which bond is as follows:

Know all men by these presents that we are held and firmly bound unto Charles E. Lewis, in the full and just sum of two hundred
24 and fifty dollars, to be paid to the said Lewis, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this day of May, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas lately at a circuit court of the United States for the eastern district of Arkansas, in a suit depending in said court between said Lewis and Chicot County, judgment was rendered against the said county, and the said county having obtained a writ of error, and filed a copy thereof in the clerk's office of said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Lewis, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next:

25 Now, the condition of the above obligation is such, that if the said Chicot County shall prosecute said writ of error to effect, and answer all damages and costs if said county fail to make her plea good,

then the above obligation to be void; else to remain in full force and virtue.

BENJ. H. SMITH. [SEAL.]
W. W. FORD. [SEAL.]
GEO. K. CRACRAFT. [SEAL.]

Sealed and delivered in presence of—

Approved by—

HENRY C. CALDWELL,
District Judge.

26 The United States of America to Charles E. Lewis, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Arkansas, wherein Chicot County is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Henry C. Caldwell, judge of the district court, this 29th day of May, A. D. 1878.

[SEAL.] HENRY C. CALDWELL,
Dist. Judge.

27 I acknowledge service of the within citation May 29, 1878.

EBEN W. KIMBALL,
For Pl'ff.

Filed May 29, 1878.

RALPH L. GOODRICH,
Clerk.

28 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing transcript annexed to this certificate is a true, correct and compared copy of the original remaining of record in my office.

In witness whereof I have hereunto set my hand and the seal of said court this third day of June, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States of America the one hundred and second.

Attest:
[SEAL.] RALPH L. GOODRICH, *Clerk.*

(Indorsement on cover:) No. 432. Chicot County, plaintiff in error, vs. Charles E. Lewis. E. Arkansas C. C. U. S. Filed 19th June, 1878.

OFFICE SUPREME COURT U.S.
FILED
NOV 19 1880
JAMES H. McKENNEY, Clerk

IN THE

SUPREME COURT

OF THE

UNITED STATES.

CHICOT COUNTY, Plaintiff in Error,

vs.

CHARLES E. LEWIS, Defendant in Error.

Error to the Circuit Court of the United States for the Eastern District of Arkansas.

PRINTED BY JAMES MITCHELL, STATE PRINTER, LITTLE ROCK, ARK.

IN THE

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UNITED STATES.

CHICOT COUNTY, Plaintiff in Error,

vs.

CHARLES E. LEWIS, Defendant in Error.

Error to the Circuit Court of the United States for the Eastern District of Arkansas.

Lewis sued the county on coupons of bonds issued in aid of a railroad.

The Act under which the bonds purport to have been issued was as follows:

"*An Act to be entitled 'An Act to Authorize Counties to Subscribe Stock in Railroads.'*

"SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, That any county in this State may subscribe to the stock of any railroad in this State, now chartered or incorporated, or which shall hereafter be chartered or incorporated, under and in accordance with the laws of this State, and may issue bonds for the amount of such stock so

subscribed, with coupons for interest, thereto attached, under such limitations and restrictions, and upon such conditions as the County Court may require, and the president and directors of such company may approve; *provided*, that the amount of such subscription shall not exceed one hundred thousand dollars, and the consent of the inhabitants of such county to such subscription shall be first obtained in the manner hereinafter provided.

"SEC. 2. Whenever the president and directors of any such railroad shall make application to the County Court of any county for such subscription by such county to its stock, specifying the amount to be subscribed and the condition of such subscription, and one hundred voters of the county shall petition the court for such purpose, it shall be the duty of the court immediately to order an election, to be holden at the place and in the manner other elections in such county are holden, for the purpose of determining whether such subscription shall be made, and at least twenty day's notice thereof shall be given in the manner provided by law for other elections; at which election those voting for such subscription shall have written or printed on their ballots or tickets, the words "for subscription" or "against subscription," and if a majority of the votes cast shall be in favor of subscription, the court shall cause such subscription to be made, and upon its acceptance by the company, shall cause bonds to be issued in conformity with such vote, which bonds shall in no case bear a higher rate of interest than six per cent. per annum, and shall not be of a less denomination than fifty dollars, and shall be accepted by the company at their par value.

"SEC. 3. The County Court shall provide, by assessment upon the taxable property of the county, for the prompt and punctual payment of the interest on the bonds as it shall become due, which assessment or tax, shall be collected as other taxes; and it shall also provide a sinking fund, consisting of dividends upon said stock, and such other incomes, revenues

and taxes as shall be deemed appropriate and sufficient for the payment of the bonds at maturity.

"SEC. 4. The coupons of such bonds shall, as they become due, be receivable in payment of all county taxes and dues.

"SEC. 5. This Act shall take effect and be in force from and after its passage

"Approved July 3, 1868."

The defendent answered as follows:

The defendant in this action for answer to the complaint of the plaintiff therein, says:

That on the 17th day of January, A. D. 1872, the County Court of the said defendant county made an order to the effect that an election should be held by the qualified electors of the said county on the 17th day of February, A. D. 1872, to determine whether the said county should subscribe one hundred thousand dollars to the capital stock of the Mississippi, Ouachita & Red River Railroad Company, and whether bonds should be issued in payment thereof, and that on the same day the said County Court made a like order for an election to be held by the qualified voters of said county on the 17th day of February, A. D. 1872, to determine whether the said county should subscribe one hundred thousand dollars to the capital stock of the Little Rock, Pine Bluff & New Orleans Railroad Company, and issue like bonds in payment thereof; and at said election held on the 17th day of February, A. D. 1872, the question was submitted to the electors of the said county as to whether the said stock should be subscribed to the said railroad companies: and, whether the said bonds should be issued in payment thereof. The submission of the said questions being made under orders made by the County Court of the said county, of the same day, and being voted on by the electors of the said county at the same polls, and not at separate polls, on the same day, by single ballots, embracing the question of the subscription to both said railroad companies, and which said ballots were deposited in one

and the same ballot-box, and that it was under the said proceedings that the said County Court subscribed one hundred thousand dollars to the capital stock of each of said railroad companies, and issued the bonds of the said county in payment thereof—the said bonds being in the aggregate for the sum of two hundred thousand dollars; of which, the bonds mentioned in the said complaint are part and parcel, and that the said bonds and coupons in said complaint mentioned, were issued on no other consideration whatever.

A demurrer was sustained to this answer, and judgment was rendered in favor of the plaintiff below.

ASSIGNMENT OF ERROR.

The court erred in sustaining the demurrer to the answer.

It is clear that the limitation on the amount of the issue expressed in the first section was intended to cover all subscriptions made, and not merely the amount subscribed by — to any one company. The phrase "such subscription," covers all underwriting whatever. To hold otherwise would be to deprive the limitation of any useful purpose.

The answer shows that this limitation was disregarded by the County Court in a flagrant manner. That court ordered two elections for a subscription to railway companies of one hundred thousand dollars each, two to be held on the same day, both to be included in the same balloting. The orders were substantially one order, and the elections were virtually one election.

If the act was beyond the jurisdiction of the court, it was void; and if void, the question of innocent purchaser, usually so fatal in suits of this kind, does not arise.

It is said in short, that the case only presents the ordinary question arising upon an overissue of bonds. The view is a plausible one at first glance; but it will not bear a close examination. If the County Court had authorized the issue of the amount of bonds permitted by the statute, and the officers issuing them had issued more than thus authorized, that would

have been a case of overissue. But here the power under which the bonds were issued was exceeded in the first instance, and there was no other power for their issue than that which was excessive under the law, and that excess made the whole act void. Every bond then must be referred to a void act for its only support. It requires no citation of authority to show that where a court exceeds its jurisdiction its acts are void. To say that the bonds here are valid, would be the same thing as to say that the Legislature could not authorize the issue of bonds of any amount without practically authorizing an unlimited issue. If the jurisdiction of a justice of the peace is limited to controversies involving not more than a hundred dollars it would never be held that a judgment rendered by a justice for ten thousand dollars, on a cause of action plainly involving that amount, would be good. In case of an overissue, there is authority for the issue of a part of the bonds, and the innocent holder is not bound to investigate the question as to what bonds are good and what are bad. But there must have been a valid exercise for the issue of some of the bonds. If the defect should go to the jurisdiction, and should apply to all the bonds without distinction, it would necessarily follow that all the bonds would be void. To hold otherwise would be to hold that the jurisdiction of a court is affected by the element of innocence on the part of the holder of the bonds; whereas, the matter of jurisdiction is one that does not fluctuate with the conditions of commercial exchange. Where there was authority, but that authority was exceeded only in the amount of the bonds issued, a part of the bonds being undoubtedly properly issued, the whole issue is legitimately referable to the power that was exercised in all things in accordance with law, so far as the power itself is concerned. But where the power has been exceeded in such a way that the whole action of the court is void for excess of jurisdiction, then the holder of the bonds has nothing to fall back upon save an order which is void on its face; which is the same thing as nothing at all.

We are aware that very broad language is sometimes used with regard to rights of innocent holders; but it must always be read in the light of the cases in which it is used. There must be a limitation somewhere. Subsequent explorations will be useless unless that limitation is found here. There has been no case that has presented the question arising in this case; none involving the same principle of palpable voidness in every constituent of the power attempted to be executed.

Respectfully,

U. M. ROSE.

Supreme Court of the United States.

No. 433.

CHICOT COUNTY, Plaintiff in Error,

vs.

CHARLES E. LEWIS.

In Error to the Circuit Court of the United States for the Eastern District of Arkansas.

EBEN W. KIMBALL,

For Defendant in Error.